Supreme Court of the United States

OCTOBER TERM

UNITED STATES, PETITIONER

v.

811.92 ACRES OF LAND, MORE OR LESS SITUATED IN EDMONSON AND HART COUNTIES, STATE OF KENTUCKY, WILLIAM R. PADGETT, ET AL.

Tract Nos. 203, 603, 603-E and 603-E-2
W. G. REYNOLDS AND MARY N. REYNOLDS, RESPONDENTS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioners base their request for a Writ of Certiorari in this case on two arguments. First, that by holding that the trial court was correct in submitting the question of the time the taking was contemplated by the government to the jury, the Court of Appeals violated Rule 71A(h) of the Federal Rules of Civil Procedure and failed to correctly apply the rule set out in *United States* v. *Miller,* 317 U. S. 369. Second, that the holding in this case is at variance with the holdings in *United States* v. *Crance*, 341 F 2d 161 (3d

Cir.) and *Amen Wardy* v. *United States,* —— F 2d —— (5th Cir.). Respondents do not agree with either position.

Rule 71A(h) provides that only the question of just compensation of the landowner will be submitted to the jury in condemnation proceedings, and that all other questions will be decided by the Court. *Scott Lumber Co., Inc.* v. *United States* —— F 2d —— (9th Cir. 1968). Certainly the rule is nothing more than a statement of an existing situation, since in condemnation proceedings the only question of fact before the Court is the question of just compensation. The question which the Court submitted to the jury in the trial of this case was a question of just compensation. The petitioner argues that the manner in which that question was submitted to the jury makes its job more complex. This is perhaps true, but the question is no more complex than other questions which are submitted to juries daily. Petitioner also argues that submitting evidence on enhanced value to the jury in cases where the jury may decide that there is no enhancement will result in compromise awards and that landowners will be more than justly compensated. There is no proof of this. Indeed in this case, where evidence of enhancement was submitted in just such a manner, the jury gave the landowner considerably less than the witnesses testified the land was worth without enhancement.

The important point is this. The question of whether the landowner was entitled to enhancement was inextricably bound up in the question of just compensation. The trial judge saw it as a mixed question of law and fact and submitted it to the jury with instructions which came directly from *Miller*. The question was decided by the jury which was charged with the duty of arriving at an amount which would constitute just compensation. The enhancement question was only part of that verdict. But it was an inseparable part. It was a question of fact relating to the

issue of just compensation and was properly submitted to the jury.

The argument that this case is at variance with cases in other circuits may be answered in much the same way. The facts in this case were such that the question of the time of the decision to take was linked to the question of just compensation. There was no way to submit one without submitting the other. The Circuit Court found that this was not the situation in *Wardy*. Petitioner argues that the situation would be the same in either case, but cites no facts, makes no comparison of the cases. From a reading of the very brief opinion in Wardy there is every indication that the landowners knew the land was to be condemned at the time they bought it. If so this certainly would not be the type of case to be submitted to a jury under a *Miller* instruction. Petitioner also argues that this case is at variance with *Crance*. However, the question of whether or not enhancement evidence should have been submitted to the jury never arose in that case. As the Circuit Court points out in its opinion in this case, the question of whether the landowner was entitled to enhancement was decided by the Court by agreement between the parties. Certainly if the parties to litigation wish a particular issue to be decided by the Court they may agree to submit that issue. However, there was no such agreement in this case. In light of the differing factual situations in the cases it is difficult to see how a variance exists. The cases are similar only in that in all three the landowner raised the question of enhancement, but they do not represent a situation where different Courts have decided a similar case different ways.

CONCLUSION

For the reason stated above Respondents argue that the Circuit Court did not improperly apply or fail to follow Rule 71A(h) Federal Rules of Civil Procedure. Nor did the Court improperly apply or fail to follow the ruling of

United States v. Miller, (Supra). Respondents also ar
that there is no variance between the decision of the C
of Appeals for the Sixth Circuit and the decision of ot
Circuits as to the submission of enhancement evidence
jurys. There is no reason for the issuance of a Writ
Certiorari in this case and the Petition should be denied.